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CHAPTER 354

SCHOOLS I—PUBLIC SCHOOL SYSTEM

EDUCATION OF HANDICAPPED CHILDREN

HOUSE BILL NO. 1164. BY REPRESENTATIVES Strable, Arnold, Buechner, Hinman, Baer, Benavidez, Bishop, Boley, Burns, Carroll, Cooper, DeMoulin, Dittmore, Edmonds, Farley, Fentress, Frank, Fuhr, Gallagher, Gaon, Gunn, Gustafson, Hamlin, Hayes, Howe, Kirscht, Kopel, Koster, Lanum, Lloyd, Miller, Mullen, Munson, O'Brien, Quinlan, Sack, Safran, Sears, Showalter, Smith, Spano, Strang, Taylor, Valdez, Webb, Wells, Younglund, Bendelow, Bryant, Faker, Eckelberry, Friedman, Herzberger, Hybl, Lucero, McNeill, Massari, Moore, Pettie, Sonnenberg, Southworth, and Tempest; also SENATORS L. Fowler, Anderson, Cole, McCormick, Alshouse, Birmingham, G. Brown, H. Brown, Calabrese, Cisneros, Darby, DeBerard, Garney, Jackson, Johnson, Kinzie, Kogovsek, Locke, MacManus, Massari, Minister, Noble, Parker, Plock, Ruland, Schieffelin, Shoemaker, Stockton, Strickland, and Wunsch.

AN ACT

AMENDING ARTICLE 22 OF CHAPTER 123, COLORADO REVISED STATUTES 1963, AS AMENDED, CONCERNING THE EDUCATION OF HANDICAPPED CHILDREN, AND MAKING AN APPROPRIATION THEREFOR.

Be it enacted by the General Assembly of the State of Colorado:

Section 1. Article 22 of chapter 123, Colorado Revised Statutes 1963, as amended, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

ARTICLE 22

Education of Handicapped Children

123-22-1. Short title. This article shall be known and may be cited as the "Handicapped Children's Educational Act".

123-22-2. Legislative declaration. The general assembly, recognizing the obligation of the state of Colorado to provide educational opportunities to all children which will enable them to lead fulfilling and productive lives, declares that the purpose of this article is to provide means for educating those children who are handicapped. It is the intent of the general assembly, in keeping with accepted educational principles, that handicapped children shall be educated in regular classrooms, insofar as practicable, and should be assigned to special education classrooms only when the nature of the child's handicap makes the inclusion of the child in a regular classroom impractical. To this end, the services of special education personnel shall be utilized within the regular school programs to the maximum extent permitted by good educational practices, both in rendering services directly to children and in providing consultative services to regular classroom teachers.

123-22-3. Definitions. (1) As used in this article, unless the context otherwise requires:

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(2) "Administrative unit" means a school district or a board of cooperative services that is providing educational services to handicapped children and that is responsible for the local administration of this article.

(3) "Department" means the department of education.

(4) "Equipment" means that equipment used especially for the education of handicapped children which is approved by the state board. The state board shall publish a list of the types of approved equipment.

(5) "Handicapped children" means those persons between the ages of five and twenty-one who by reason of one or more of the following conditions are unable to receive reasonable benefit from ordinary education: Long-term physical impairment or illness; significant limited intellectual capacity; significant identifiable emotional or behavior disorder or identifiable perceptual or communicative disorders; or speech disorders. "Handicapped children" also means those persons between the ages of five and twenty-one whose presence in the ordinary educational program is detrimental to the education of others and must therefore receive modified or supplementary assistance and services in order to function and learn. A school district may make special educational programs and services available to persons under age five who would otherwise qualify as handicapped children under this subsection (5), and such persons enrolled in special educational programs or receiving special educational services shall be deemed to be "handicapped children" for all purposes of this article. The state board shall develop guidelines for the identification of handicapped children who may become eligible for special educational services under provisions of this article.

(6) "Instructional materials" means those materials used especially for the education of handicapped children. Consumable materials and regular textbooks shall not be considered reimbursable items if such materials and textbooks are not to be used especially for the education of handicapped children.

(7) "Optometrist" means a doctor of optometry duly licensed to practice optometry.

(8) "Physician" means a doctor of medicine or osteopathy duly licensed to practice medicine.

(9) (a) "Psychologist" means any person who meets any one of the following requirements:

(b) He is properly certificated as a school psychologist by the state board.

(c) He is properly certified as a psychologist by the Colorado state board of psychologist examiners.

(d) He has a minimum of two years of graduate training in psychology, is supervised by a psychologist as defined in paragraphs (b) or (c) of this subsection (9), and is employed as a psychologist by an institution of higher education, hospital, or mental health clinic or agency that is supported at least in part by government funds.

(10) "School district" means a school district organized and existing pursuant to law, but shall not include a junior college district.

(11) "State board" means the state board of education.

123-22-4. Administration. (1) This article shall be administered by the department. Administration of this article shall include the recommendation to the state board of education of reasonable criteria, rules, and regulations; recommended minimum standards for facilities, materials, equipment, and personnel; and recommended assessment criteria for identifying handicapped children, their level of handicap, and the special services needed. The state board of education shall adopt appropriate recommendations following public hearings in several locations throughout the state with respect to the suggested criteria, rules, regulations, and standards. Recommendations adopted by the state board shall be in accord with the legislative declaration set forth in section 123-22-2. Any school district which provides plans, programs, or services which do not reasonably satisfy the criteria, rules, regulations, and standards recommended by the state board of education will be provided by the department of education with a detailed analysis of any discrepancies noted along with specific recommendations for their correction. Funding will be provided or continued for a reasonable period of time, as determined by the department of education, to allow the local district opportunity to satisfy the recommended criteria, rules, regulations, and standards, or to establish a claim for variance based upon conditions indigenous to a local district.

(2) In order to assist the state board in the performance of its responsibilities for the implementation of this article, a state special education advisory committee of an appropriate size shall be appointed by the state board. The members of the advisory committee shall include at least two special education teachers, at least two administrators with experience in special education, at least two parents of children presently or formerly enrolled in special education programs, and one representative from the department of institutions. Members shall be appointed for one-year or two-year terms.

(3) The department shall submit to the governor and the education committees and the joint budget committee of the general assembly an annual report of the type and number of handicapped children served and not served, what educational services are provided to them, and the total costs incurred for the services, whether state, federal, local, or privately funded. The report shall include a measurable qualitative evaluation of the educational services rendered. The audit performed by the school district shall certify the number of pupils enrolled in special education programs and the numbers and salaries of reimbursable personnel.

(4) To comply with this section, the department shall maintain a data and information system on children, personnel, costs, and revenues.

123-22-5. Depository and retrieval network for visually and hearing handicapped children. The department will maintain a production, inventory, and depository system for those textbooks, equipment, and instructional and resource materials used in the education of visually and hearing handicapped children or in the inservice training of professional personnel. The services of said system shall be available to those administrative units which find it more economical to employ materials from a central depository than to maintain their own.

123-22-6. Special educational programs. (1) By September 1, 1973, every school district in the state shall be either an administrative unit in itself or in a board of cooperative services which shall be designated as an adminis-

trative unit. An administrative unit shall be a school district or board of cooperative services which meets criteria established by the state board governing the duties and responsibilities of the director of special education and is either a board of cooperative services which conducts special educational programs for all school districts which are members of the board of cooperative services or is a school district which meets criteria of geographic size, location, and number of pupils established by the state board to achieve maximum efficiency in administering programs of special education. Although the state board shall define the qualifications and the general duties and responsibilities of directors of special education, such directors shall be regarded for all purposes as employees of their local administrative units and subject to the administrative direction of such units.

(2) Each administrative unit shall submit a plan to the department no later than January 1, 1974, indicating how the school district will provide for education of all handicapped children between the ages of five and twenty-one no later than July 1, 1975. Each unit plan shall include the type and number of handicapped children in the unit based upon the department's criteria of incidence, the services to be provided, and the estimated resources necessary. If any administrative unit fails to submit an acceptable plan by January 1, 1974, the state board shall provide a comprehensive plan by July 1, 1974, for the education of handicapped children within the administrative unit.

(3) Administrative units may until July 1, 1975, and shall thereafter make available special educational services for the education of any handicapped child between the ages of five and twenty-one under jurisdiction of the administrative unit.

(4) To comply with this section, an administrative unit may contract with one or more administrative units to establish and maintain special educational programs for the education of handicapped children, sharing the costs thereof in accordance with the terms of the contract agreed upon; or an administrative unit having fewer than six children who need a particular kind of special educational program may purchase services from one or more administrative units where an appropriate special educational program exists.

(5) By September 1, 1973, and thereafter, each administrative unit shall employ a director of special education. From and after July 1, 1975, no director of special education shall be employed who does not meet qualification standards as set by the state board.

(6) By July 1, 1975, and thereafter, each administrative unit shall employ a sufficient number of school psychologists and school social workers or contract for services to adequately carry out those functions that provide for teacher referral of children who may be handicapped, case finding and assessment, staffing of the special committee as provided for in section 123-22-8 (1) and (4), teacher and parent counseling and consultation, and inservice education for school staff and volunteers. In submitting that portion of the plan to comply with this subsection (6), the administrative unit may indicate how it intends to utilize the services of existing mental health clinics or centers in carrying out the functions named above in cooperation and coordination with the school psychologists and school social workers.

(7) Any administrative unit planning to utilize federal funds from any source for the education of handicapped children as provided in this article shall obtain prior approval from the department for the use of such funds.

The use of such funds in the administrative unit shall be in accordance with rules and regulations as established by the department, which are not in conflict with federal law or regulations.

(8) Nothing in this section shall be construed to change the purpose and function of the school for the deaf and blind in Colorado Springs, or to change the requirements or standards for admission thereto.

123-22-7. Authority to contract with community center boards. (1) An administrative unit may contract with an institution of higher education, or a community center board, as provided in section 71-8-2, C.R.S. 1963, for the provision by the administrative unit of an education and training program for handicapped children. If such agreement is arrived at by the two agencies, the administrative unit shall place the responsibility for administering the program with the director of special education.

(2) The two agencies shall agree to an amount per child that the institution of higher education or community center board shall pay to the administrative unit for providing such services. No school district providing an education and training program for handicapped children under contract with an institution of higher education or a community center board shall count such children as regularly enrolled for the purposes of the general state school aid as provided by law. The institution of higher education or community center board shall pay to the administrative unit providing the program an amount per child as agreed upon by the institution or board and the administrative unit, but such amount shall not be less than the amount per child provided to the institution or board by the department of institutions for educational purposes pursuant to section 71-8-2 (1), C.R.S. 1963. Any school district providing an education and training program for handicapped children domiciled in that district shall not be required to provide to an institution of higher education or a community center board the amount required by section 71-8-2 (3), C.R.S. 1963, on behalf of those children; but each such school district shall expend out of its own funds at least the amount required by the said section 71-8-2 (3), C.R.S. 1963, in providing the program.

123-22-8. Determination of handicap — enrollment. (1) The determination that a child is handicapped and the recommendation for placement of that child in a special educational program shall be made by a committee of professionally qualified personnel designated by the board of education of the school district or by the governing board of the board of cooperative services if the administrative unit encompasses more than a single school district. The composition of the committee shall be prescribed by the state board and may be composed of but not limited to the following: A psychologist, a social worker, a physician, a school administrator, and a teacher of the handicapped. The committee shall give parents of an allegedly handicapped child an opportunity to consult with the committee or representative thereof prior to determination that their child is handicapped.

(2) Before any child is given an individually administered battery of psychological tests for placement in a special educational program, the child's parent or guardian must give consent in writing.

(3) In case of appeal, the final approval of the enrollment of any eligible handicapped child in a special educational program shall be made by the board of education of the school district of the child's residence.

(4) The committee, named in subsection (1) of this section, shall review the placement of each child who is enrolled in a special educational program at least once every year.

(5) In formulating recommendations for placement of a handicapped child, the committee shall work cooperatively with the department of institutions, when applicable, and shall be guided by the legislative declaration contained in section 123-22-2.

123-22-9. Tuition. If an administrative unit cannot provide an educational program for a handicapped child because of the uniqueness of the handicap, the administrative unit may contract with another administrative unit to provide the needed program, upon approval by the department. In such an instance the administrative unit of the child's residence shall reimburse the administrative unit of the child's attendance in an amount equal to the cost of educating that child after applicable revenues from federal funds, state equalization funds, and reimbursements under the provisions of this article have been deducted. Reimbursement by the department under this section shall not be subject to proration under the provisions of section 123-22-14 (3).

123-22-10. Maintenance. For each child enrolled in a special educational program for handicapped children in an administrative unit, the department shall pay to the administrative unit of the child's residence for the maintenance in a family care home in the administrative unit of the child's attendance an amount equal to the established family care home rate of the community for a school year, as established by the division of public welfare of the department of social services, with final approval to be made by the department. Such placement shall be made only in a family care home licensed by the department of social services, and such placements may be made in homes of relatives. Reimbursement by the department under this section shall not be subject to proration under the provisions of section 123-22-14 (3).

123-22-11. Materials and equipment. An administrative unit may purchase and be reimbursed for materials and equipment for the education of handicapped children. To be eligible for reimbursement, the administrative unit shall maintain a special education instructional materials center and may employ a special education instructional materials specialist. A qualifying center may be operated as a part of an existing instructional materials center, but such portion shall be specifically accounted for.

123-22-12. Length of school year. Administrative units may conduct special educational programs as prescribed in this article for any length of time, except that the administrative unit must meet the minimum length of time as established by law for school districts.

123-22-13. School district report. The governing board of each administrative unit which is eligible for reimbursement under any provisions of this article shall file with the department, on or before July 15, 1973, and July 15 of each year thereafter, a report which contains a statement of the reimbursable costs of approved programs as outlined in section 123-22-14 and other information as required by the state board.

123-22-14. Reimbursable costs of programs. (1) (a) Beginning in the fiscal year 1973 — 1974, an administrative unit which maintains and operates

special educational programs approved by the department for the education of handicapped children shall be entitled to reimbursement for:

(b) (i) Eighty percent of that portion of the salary of the following personnel which is attributable, in accordance with regulations of the department, to special educational programs:

(ii) Administrator and assistant administrator of special education in an administrative unit, if such administrator meets the qualification standards for administrators as set by the state board;

(iii) Supervisors of special programs;

(iv) Teachers of special classes;

(v) Teachers of special resource rooms;

(vi) Teachers of special itinerant programs;

(vii) School psychologists;

(viii) School social workers;

(ix) School audiologists;

(x) Occupational therapists;

(xi) Physical therapists;

(xii) Special education instructional aides;

(xiii) Special education instructional materials specialists;

(xiv) Speech correctionists;

(xv) Mobility specialists for the blind;

(xvi) Special education secretaries;

(xvii) Registered school nurses;

(c) (i) Eighty percent of the costs of:

(ii) Special transportation provided for handicapped children only, after other funds reimbursed by the state are deducted;

(iii) Home-to-school or hospital-to-school equipment;

(iv) Consultation and evaluation services provided by psychiatrists, psychologists, and social workers employed by mental health clinics and centers approved by the department, and eighty percent of mileage expenses incurred by such personnel in traveling from their base of operations to other attendance centers in the course of fulfilling job requirements;

(v) In-service training of regular classroom teachers to provide special education services to children within regular classrooms insofar as is practicable and efficacious;

(vi) For each child so accepted, the average cost per pupil of educating children with similar handicaps in any unit which accepts a child from another administrative unit in one or more of its special education programs, such reimbursement to be made to the administrative unit of the child's residence.

(d) Fifty percent of the costs of materials for the education of handicapped children or two hundred dollars per special education teacher, whichever is less;

(e) Fifty percent of the costs of equipment used in the education of handicapped children;

(f) (i) One hundred percent of the costs of:

(ii) Maintenance of a child in a licensed family care home;

(iii) The average cost per pupil of children with similar handicaps of an administrative unit that accepts a child from another administrative unit in one of its special educational programs.

(2) Payments made under the provisions of this article shall in no way affect the amount of other state aid for which a school district may qualify.

(3) In the event appropriations shall be insufficient to cover reimbursements provided for in subsection (1) of this section, all approved reimbursements, except those for tuition and for maintenance in a family care home, which shall always be fully reimbursed, shall be prorated on the basis of total claims submitted in proportion to funds available for reimbursement.

(4) The enactment of this article shall not affect reimbursements under prior law for special educational programs conducted during the period prior to July 1, 1973.

(5) Reimbursements to any administrative unit under the provisions of this article shall in no instance exceed one hundred percent of the attributable student cost when such reimbursements are combined with all other applicable state, private, and federal resources.

Section 2. Appropriation. In addition to any other appropriation, there is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, to the department of education, for the fiscal year beginning July 1, 1973, the sum of four million six hundred sixty thousand two hundred sixteen dollars (\$4,660,216), or so much thereof as may be necessary, for the implementation of this act. Of the total amount appropriated by this section, the sum of forty-seven thousand nine hundred dollars (\$47,900), or so much thereof as may be necessary, shall be used for the implementation of section 123-22-5, C.R.S. 1963; the sum of one hundred fifty-two thousand dollars (\$152,000), or so much thereof as may be necessary, shall be used for the implementation of section 123-22-4 (4), C.R.S. 1963; and the sum of two million dollars (\$2,000,000), or so much thereof as may be necessary, shall be used for the implementation of section 123-22-14 (1) (c) (v), C.R.S. 1963.

Section 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: July 6, 1973